

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 23-2130V

KIMBERLY COLE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 26, 2024

William E. Cochran, Jr., Black McLaren et al., PC, Memphis, TN , for Petitioner.

Debra A. Filteau Begley, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON DAMAGES¹

On December 15, 2023, Kimberly Cole filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as the result of an influenza (“flu”) vaccination received on December 8, 2022. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On August 27, 2024, a Ruling on Entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On September 25, 2024, Respondent filed a Proffer on award of compensation (“Proffer”). Respondent represented that Petitioner agrees with the proffered award. *Id.* at 1 – 2. Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Pursuant to the terms stated in the Proffer, I award the following compensation:

A lump sum of \$55,160.51 (representing \$55,000.00 for pain and suffering, and \$160.51 for past unreimbursable expenses) in the form of a check payable to Petitioner. Proffer at 2. This amount represents compensation for all damages that would be available under Section 15(a). *Id.*

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KIMBERLY COLE , *

Petitioner, *

v. *

SECRETARY OF HEALTH AND *

HUMAN SERVICES, *

Respondent. *

**No. 23-2130V
Chief Special Master Corcoran
ECF**

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On December 15, 2023, Kimberly Cole (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleges that she received an influenza (“flu”) vaccination on December 8, 2022, and thereafter suffered from a shoulder injury related to vaccine administration (“SIRVA”). On August 23, 2024, respondent filed a Rule 4(c) Report, conceding that petitioner’s claim meets the Table criteria for a SIRVA injury. On August 27, 2024, the Court issued a Ruling on Entitlement finding petitioner entitled to compensation under the Vaccine Act.

I. Items of Compensation

Based upon the evidence of record, respondent proffers that petitioner should be awarded the following, and requests that the Chief Special Master’s decision and the Court’s judgment award:

- a. a lump sum payment of **\$55,000.00**, which represents compensation for pain and suffering, *see* 42 U.S.C. § 300aa-15(a)(4), and

- b. a lump sum payment of **\$160.51**, which represents compensation for past unreimbursed medical expenses, *see* 42 U.S.C. § 300aa-15(a)(1).

These amounts represent all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).¹ Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the Chief Special Master's decision and Court's judgment award petitioner a lump sum payment of **\$55,160.51**, in the form of a check payable to petitioner.

Respectfully submitted,

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¹ Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future pain and suffering.

/s/ DEBRA A. FILTEAU BEGLEY
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Dated: September 25, 2004